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Chile: Political Costs of Aylwin's Human Rights Strategy [REDACTED]

Publication in March of a government-commissioned report examining Pinochet-era human rights abuses has put the military on the defensive and provoked a terrorist backlash, sparking public debate over the acceptable costs of President Aylwin's moderate human rights policy. Some ruling coalition members and rightist politicians, charging that government steps to restore civil liberties denied under the military regime have undermined public safety, have called on Aylwin to restore the Army's internal security duties—a development Army Chief Pinochet has encouraged and the President has resisted. [REDACTED]

In recent weeks, the President has tried to deflect criticism of both his administration and the military, with which he has sought to establish cordial relations, by giving the police forces broader enforcement powers and blaming the far left for the upsurge in violence. Aylwin has also publicly emphasized judicial complicity in past human rights violations, and pressed for sweeping Supreme Court reforms. In our view, Aylwin is unlikely to abandon his moderate human rights strategy or permit the Army to reassume an internal security role, even in the face of an upsurge in terrorism or increased public criticism. Nevertheless, the President's efforts to advance judicial reform to resolve the human rights issue may make military officers more vulnerable to prosecutions for abuses, raising civil-military tensions and putting the political right on the defensive. [REDACTED]

Fallout From Human Rights Report

In April 1990, Aylwin sought to defuse the emotional human rights issue by creating the Rettig Commission, headed by former Senator Raul Rettig. He gave it a narrow mandate to investigate deaths or disappearances during the Pinochet era and to compensate relatives of victims. The move initially sparked a wave of public criticism of the military, with the far left seizing on it to press for Pinochet's removal as Army Chief and the repeal of the 1978 amnesty law, which protects officers from prosecution for crimes committed before that date. The military hierarchy initially adopted a wait-and-see

attitude toward the Commission, [REDACTED]
[REDACTED]

Fallout from the publication in March this year of the commission report detailing armed forces complicity in more than 2,000 deaths is testing Aylwin's conciliatory skills and the commitment of the ruling coalition to his moderate human rights strategy. Some coalition members on the left initially reacted to the report by renewing calls for Pinochet's removal, which the Army high command answered by publicly restating its unconditional support for the General. Increased public criticism of the armed forces, in turn, put rightist allies on the defensive. [REDACTED]

A rise in terrorist activity following the Rettig report's release, capped by the assassination in April of Jaime Guzman, a prominent conservative ally of Pinochet, has heightened political debate among centrist and rightist politicians over the potential costs of Aylwin's human rights strategy. Rightist politicians and some members of Aylwin's coalition are trying to recoup their position by criticizing the lethal consequences of the Rettig report and the government's counterterrorism policy, according to press reports. A prominent senator from Aylwin's Christian Democratic Party has proposed that the President return the Army to its role in maintaining internal security because the police forces are not up to the task. [REDACTED]

Army Reaction to Terrorism

Pinochet has capitalized on widespread concern that the government is unable to counter rising political violence by pressing for a renewed internal security role for the Army. [REDACTED]
[REDACTED]

Proposed Reforms of the Judiciary

The courts' inefficiency and lack of integrity seriously eroded public confidence in the judiciary during the Pinochet years, leading to widespread acknowledgement that the institution needs reform. The Aylwin administration's proposed constitutional changes would create a National Court of Justice—composed of representatives of the legal profession, the President, and Congress—to formulate judicial policy. The entity's goal would be to improve court functioning and ensure objectivity. It would be responsible for nominating prospective judges, prosecutors, and lawyers, and administer auxiliaries to organizations such as the Judicial School, the National Service of Legal Defense, and the judicial police. The proposed bill would also create an ombudsman, nominated for a four-year term by the President and confirmed by a simple majority of the legislature, to safeguard civil and political rights. [REDACTED]

The government has also targeted the Supreme Court for sweeping structural reforms. Faced with 16 high court justices who still have long terms to serve, the government favors adding five more and raising standards for entry into the judicial branch and for promotions.¹ A controversial provision of the bill calls for a third of the Supreme Court to be attorneys drawn from outside the judiciary and would allow the National Court of Justice—rather than the Supreme Court, as is now the case—to propose new justices and the prosecutor to the Court, subject to Presidential approval. [REDACTED]

Aylwin is likely to encounter significant resistance to his proposed reforms from rightist legislators and the Supreme Court. The National Renovation Party, although acknowledging the need for reform, has indicated it will wage a strong battle in the legislature over Aylwin's proposed changes. In addition to refusing to discuss the proposed legislation while the government is publicly criticizing the judiciary's failings, the party has charged that a National Court of Justice will politicize the judicial branch. Press reports say that at least some members of the Supreme Court are opposed to the creation of a National Court of Justice, and the Court soon will send a report to the Congress on the subject. [REDACTED]

¹Under the constitution, Supreme Court judges step down at age 75, with the exception of the President of the Court—who will complete his five-year term this month. Transitory Article Eight enacted during the Pinochet regime enabled all justices on the Court as of 11 March 1981 to remain. [REDACTED] in June 1989, however, Pinochet enacted a law that enabled six ministers age 75 or older to retire in exchange for a large cash bonus. This permitted Pinochet to pack the court with malleable and mediocre replacements. [REDACTED]

Although Aylwin concurs that the Army is the service best prepared to combat terrorism, he has rejected Pinochet's request for an internal security role. [REDACTED]

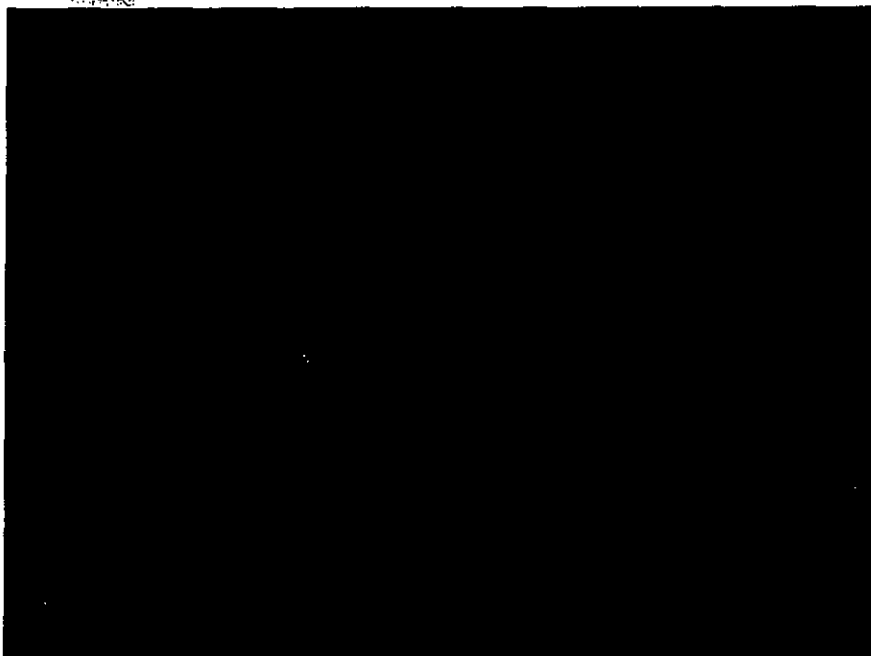
Pinochet's campaign to restore counterterrorism duties to the Army apparently also aims to vindicate his regime's harshness toward the left and to undercut the

impact of the Rettig report. [REDACTED]

[REDACTED] Press reports say that Pinochet chaired a meeting of prominent Congressional leaders to present the Army's ideas for eliminating political violence. [REDACTED]

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Supreme Court President Maldonado's Successor



According to the Chilean constitution, the Supreme Court President serves a one-time, five-year term, and is elected from and by the members of the Supreme Court. This June, Judge Enrique Correa, who was elected to the position, made a number of comments in a lengthy press interview suggesting that he will be an impediment to Aylwin's efforts to reform the Courts—for example:

- *"The Executive-Presidential power of the Republic lacks the faculties to discredit, in such an unjust and strong manner, the Supreme Court . . . The criticisms made against us have no basis: we have upheld the existing law."*
- *"I can't accept—for any reason!—the proposed National Council of Justice. It signifies the death of the independence of the Judicial branch."*

The Government's Response: Taking Tougher Steps . . .

Aylwin has responded to growing public impatience with the government's failure to control terrorism by broadening police enforcement powers.

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[REDACTED] In the weeks surrounding the Guzman assassination, the President pledged increased funding and training for the national constabulary force and the investigative police and announced formation of a special intelligence unit to better coordinate their efforts. In addition, the government has proposed legislation to permit police wiretaps and access to bank accounts, and amendments of the existing antiterrorist law to reduce penalties for or even provide immunity to police informants. [REDACTED]

At the same time, we believe criticism from the right has compelled Aylwin to play down efforts to restore civil liberties eroded during the Pinochet years. Aylwin, having sponsored laws during his first year that redefined terrorist crimes and enabled him to pardon leftists imprisoned under the military regime, has now become vulnerable to charges from the far right that such laws compromise public security. [REDACTED]

[REDACTED] The widely publicized arrest in March of an individual pardoned by Aylwin—and since discovered to have terrorist links—has further undercut the President's position. In an effort to defuse this issue, Aylwin stressed following the Guzman murder that he would review pardons for political prisoners more carefully and that those linked to terrorist groups could expect no leniency. [REDACTED]

... and Pointing the Finger

The government has complemented its tougher law enforcement line with public statements emphasizing the extreme left's responsibility for the violence. The government is pressing sedition charges against two terrorist groups, and Aylwin publicly rebuked Communist Party leader Luis Corvalan for advising Chilean youth to store their arms in case of future need. In addition, officials have avoided comment on two recent press reports hinting at possible rightist involvement in the political violence, apparently to avoid exacerbating tensions with the military and the political right. In April, the media detailed the abduction and torture of a leftist student leader and allegations by an alleged former member of the

disbanded Pinochet-era secret police that 75 percent of the bomb attacks blamed on the left during that period were perpetrated by the security services. [REDACTED]

Aylwin has tried to protect his administration from charges of permissiveness—and the military, from human rights-related accusations—by focusing attention on the judiciary's complicity in past human rights abuses and calling for sweeping reform. During the years of military rule, Pinochet packed the Supreme Court with handpicked judges, and the courts narrowly interpreted laws with little regard to civil or human rights. [REDACTED] Aylwin has lambasted the Court for a "lack of moral courage" in dealing with the abuses detailed in the Rettig report, and called on it to speed up processing of human rights cases. He has pressed the justices to reconsider their decision that the 1978 amnesty law prohibits investigations to establish responsibility for abuses committed before that date. Finally, Aylwin has proposed reform legislation to restore the judiciary's independence and integrity by expanding the number of Supreme Court justices—thereby diluting the influence of Pinochet's appointees—and creating a National Court of Justice with oversight over the judiciary. [REDACTED]

The Supreme Court and political right have reacted strongly to the President's statements, charging that he is mounting a smear campaign against the Court and interfering with the judicial process. The National Renovation Party claims that discussing judicial reform is inappropriate while the courts are under attack. The justices, citing recently discovered terrorist threats against them, have stated that Aylwin's criticisms threaten the "current rule of law." [REDACTED]

Outlook

Public support for a policy of reconciliation still appears strong. In our view, Aylwin is unlikely to abandon his moderate human rights strategy, even in the face of increased terrorism and growing pressure from political parties and the military. He is likely to try to deflect criticism by continuing to "talk tough" on political violence, to highlight administration law-and-order measures, and to push leftist political parties to rein in terrorist groups. [REDACTED]

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We believe Aylwin is unlikely to permit the Army to renew its counterterrorist role, recognizing such a move would draw sharp criticism from the left and could spark increased terrorist activity over the short term. He probably will continue, however, to press the military to cooperate in counterterrorism efforts by providing intelligence collected during the Pinochet era. [REDACTED]

We expect Aylwin—a lawyer—to stand firm on the need for judicial reform. [REDACTED]

[REDACTED] Aylwin's statements about judicial culpability in human rights abuses reflect strong personal convictions, not just an intent to discourage leftist critics from blaming the military. His progress probably will be slowed by vocal opposition from opponents on the right to many features of his proposed legislation. Moreover, the new Supreme Court President, who has been highly critical of Aylwin's remarks, will participate in evaluating the proposed reforms, according to press reports. Any terrorist attacks against Court members could draw charges from rightists that the government's harsh criticism of the Court contributed to the violence and might derail a judicial reform program. [REDACTED]

Even if judicial reform proceeds, it probably will have a downside for the government. Aylwin's focus on the judiciary's failings provides the military some protection from attack in the short term, but any progress on reforms eventually will increase the armed forces' vulnerability to investigations of human rights abuses, in our view. As the public gains confidence in the judicial process, more victims of human rights abuses may seek prosecution of military officers and the overturn of the 1978 amnesty law. Moreover, if terrorism accelerates—dramatically demonstrating that the Rettig report has failed to satisfy calls for justice—political support for trials may grow. [REDACTED]

Reorganizing the judicial branch probably will also increase pressure on the Aylwin government to clarify its position on the amnesty law, prosecutions of individual officers, and the possibility of pardons. Although many officers presumably recognize that the government cannot ignore past abuses, some may close ranks behind Pinochet if Aylwin appears unwilling or unable to deflect public demands for exhaustive legal proceedings. In our view, Aylwin, recognizing this risk, may try to strike a secret bargain with the military hierarchy whereby the latter agrees to the trial of a few "expendable" officers in return for a promise of government amnesties and protection for the senior leadership. Increasing public calls for justice could impede the government's ability to negotiate such a deal, however. Thus, judicial reform is likely to come at the cost of rolling government relations with the military and its traditional allies on the political right. [REDACTED]

Despite the political heat that progress on judicial reform may engender, it will advance Washington's goals of consolidating Chilean democracy under strong civilian authority and redressing past human rights violations. Reforms could spur investigations of outstanding human rights cases and assist in the resolution of those now pending. Moreover, a more independent judiciary would significantly enhance prospects for a just resolution of the Letelier case, involving the 1976 murders of former Foreign Minister Letelier and his US assistant in Washington. [REDACTED]

(REVERSE BLANK)